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APR 28 2009

OFFICE OF PETITIONS

In re Application of :
Singh et al. : DECISION ON APPLICATION
Application No.: 10/688,797 : UNDER 37 CFR 1.705(b)
Filed: 10/17/2003 :
Attorney Docket No. :
016301-78410US :

This is a decision on the "PETITION UNDER 37 CFR § 1.705(b) APPLICATION FOR PATENT TERM ADJUSTMENT (PTA) UNDER 37 C.F.R. § 1.705" filed on April 30, 2008. Applicants request that the Patent Term Adjustment for the above-identified patent be increased from 269 days to 315 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is ONE HUNDRED THIRTY-NINE (139) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 21, 2008, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was 269 days. The period of adjustment was 350 days of PTO delay and 81 days of applicant delay.

The subject application for patent term adjustment was timely filed on April 30, 2008.¹

Applicants state that the subject application is not subject to a terminal disclaimer.

Applicants contend that the patent term adjustment should be increased to 315 days as a result of Office delay in issuance of a notice of allowance after the termination, on September 6, 2007, of the suspension of action under 37 CFR 1.103 requested on March 19, 2007.

On March 19, 2007, a request for continued examination (RCE) and a request for suspension of action under 37 CFR 1.103 were filed. On June 8, 2007, an Office communication granting the request for suspension of action was mailed stating that pursuant to applicant's request, action by the Office is suspended on the application for three (3) months under 37 CFR 1.103(a). On September 6, 2007, applicants filed a letter requesting termination of the suspension of action. On February 21, 2008, a notice of allowance was mailed.

37 CFR 1.703(a)(2) states that the period of adjustment under § 1.702(a) is the sum of the following periods: The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

37 CFR 1.704(c)(1) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

¹ The issue fee was previously paid on August 2, 2006, in response to the Notice of Allowance mailed on June 27, 2006. A Request for Continued Examination (RCE) was filed on November 3, 2006, accompanied by a petition to withdraw the application from issue. A Notice of Allowance was again mailed on February 20, 2007, and an RCE was filed in response on March 19, 2007. The application for patent term adjustment was filed in response to a third Notice of Allowance mailed on February 21, 2008 and prior to the resubmission of the issue fee on July 31, 2008. Further, the applicant on application for patent term adjustment alleges Office delay in responding to their paper filed on September 6, 2007, and does not dispute any calculations prior to that time. Thus applicant timely argues that the Notice of Allowance mailed on February 21, 2008, and no prior Notice of Allowance, should include an additional adjustment for Office delay.

Suspension of action under § 1.103 at the applicant's request, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a request for suspension of action under § 1.103 was filed and ending on the date of the termination of the suspension;

MPEP 709 states, in pertinent part, that the request for termination of a suspension of action will be effective when an appropriate official of the Office takes action thereon. If the request for termination properly identifies the application and the period of suspension has not expired when the Office acts on the request, the Office will terminate the suspension and place the application on the examiner's docket.

On March 19, 2007, a request for suspension of action under 37 CFR 1.103(c) was filed. On June 8, 2007, the request for suspension of action was granted for a period of three (3) months. Thus, the period of reduction of patent term adjustment runs from March 19, 2007, the date the request for suspension of action was filed, to September 8, 2007, the date the suspension was terminated, or 174 days.² The patent term adjustment is thereby reduced by one hundred seventy-four (174) days pursuant to 37 CFR 1.704(c)(1).

On September 8, 2007, the suspension was terminated. On February 21, 2008, four (4) months and 44 days after the day after the date the suspension was terminated, a notice of allowance was mailed. Accordingly, the patent term adjustment is thereby increased by forty-four (44) days for Office delay in failure to mail an Office action or notice of allowance within four (4) months of the date of termination of the suspension.

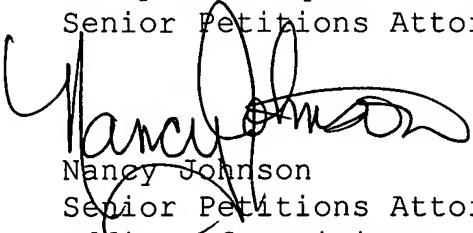
In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE HUNDRED THIRTY-NINE (139) days (394 (350+44) days of PTO delay, reduced by 255 (81+174) days of Applicant delay).

The \$200.00 fee set forth in 37 CFR 1.18(e) has been received. This fee is required and will not be waived.

²As the Office did not act on the request for termination of suspension of action filed on September 6, 2007, the suspension is considered terminated as of three (3) months after the date of mailing of the letter mailed on June 8, 2007, granting the request for suspension of action for a period of three (3) months.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries regarding this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Encl: Revised PAIR Calculation

PALM INTRANET

PTA Calculations for Application: 10/688797			
Application Filing Date:	10/17/2003	PTO Delay (PTO):	350
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	81
Post-Issue Petitions:	0	Total PTA (days):	139
PTO Delay Adjustment:	-130		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
101	04/27/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		174	
100	04/27/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	44		
86	02/21/2008	MAIL NOTICE OF ALLOWANCE			
85	02/04/2008	ISSUE REVISION COMPLETED			
84	02/04/2008	DOCUMENT VERIFICATION			
83	02/04/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
82	02/04/2008	NOTICE OF ALLOWABILITY			
76	09/06/2007	MISCELLANEOUS INCOMING LETTER			
75	10/04/2007	CASE DOCKETED TO EXAMINER IN GAU			
74	06/08/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
73	06/07/2007	MISCELLANEOUS ACTION WITH SSP			
72	03/28/2007	DATE FORWARDED TO EXAMINER			
71	03/18/2007	RCE- AF PROCESSED			
70	03/28/2007	DATE FORWARDED TO EXAMINER			
69	03/18/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
68	03/28/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
67	03/19/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
66	02/23/2007	EXPORT TO INITIAL DATA CAPTURE			
65	02/22/2007	CORRESPONDENCE ADDRESS CHANGE			
64	02/22/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
63	02/20/2007	MAIL NOTICE OF ALLOWANCE			
62	01/26/2007	ISSUE REVISION COMPLETED			

61	01/26/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
60	01/22/2007	NOTICE OF ALLOWABILITY			
59	11/03/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
58	12/05/2006	FINISHED INITIAL DATA CAPTURE			
57.7	11/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
57	11/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
56	11/14/2006	DATE FORWARDED TO EXAMINER			
55	11/03/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
54	11/14/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
50	11/09/2006	WORKFLOW - QUERY REQUEST - FINISH			
49	11/09/2006	MAIL-RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
48	11/03/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
47	10/30/2006	TC RETURN TO PUBS			
46	11/03/2006	PETITION ENTERED			
45	08/07/2006	PUBS CASE REMAND TO TC			
44	08/10/2006	WORKFLOW - QUERY REQUEST - BEGIN			
43	08/08/2006	APPLICATION IS CONSIDERED READY FOR ISSUE			
42	08/02/2006	ISSUE FEE PAYMENT VERIFIED			
41	08/02/2006	ISSUE FEE PAYMENT RECEIVED			
40	06/30/2006	EXPORT TO INITIAL DATA CAPTURE			
39	06/27/2006	MAIL NOTICE OF ALLOWANCE			
38	03/29/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
37	06/13/2006	ISSUE REVISION COMPLETED			
36	06/13/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
35	06/13/2006	CASE DOCKETED TO EXAMINER IN GAU			
34.7	03/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	03/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	06/17/2005	REFERENCE CAPTURE ON IDS			

32	06/09/2006	NOTICE OF ALLOWABILITY				
31	03/29/2006	DATE FORWARDED TO EXAMINER				
30	03/23/2006	RESPONSE AFTER NON-FINAL ACTION		21	27	
29	03/09/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT				
28	03/06/2006	DATE FORWARDED TO EXAMINER				
27.1	03/02/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION				
27	03/02/2006	RESPONSE AFTER NON-FINAL ACTION				
26	12/02/2005	MAIL NON-FINAL REJECTION	350		-1	
25	11/28/2005	NON-FINAL REJECTION				
24	09/14/2005	CASE DOCKETED TO EXAMINER IN GAU				
23	07/21/2005	PRELIMINARY AMENDMENT				
22.7	06/17/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
22	06/17/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
21	02/07/2005	CORRESPONDENCE ADDRESS CHANGE				
20	11/22/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE				
19	06/28/2004	REFERENCE CAPTURE ON IDS				
18.7	06/28/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
18	06/28/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
17	02/12/2004	REFERENCE CAPTURE ON IDS				
16.7	02/12/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
16	02/12/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
15	11/22/2004	CASE DOCKETED TO EXAMINER IN GAU				
14	08/05/2004	APPLICATION RETURN FROM OIPE				
13	08/05/2004	APPLICATION RETURN TO OIPE				
12	08/05/2004	APPLICATION DISPATCHED FROM OIPE				
11	08/06/2004	APPLICATION IS NOW COMPLETE				
10	07/08/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEEXAM		60	7	
8	07/08/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC				

7	02/09/2004	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
5	01/29/2004	CLEARED BY L&R (LARS)			
4	01/13/2004	CASE CLASSIFIED BY OIPE			
3	01/13/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
2	12/17/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/17/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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